

STATE OF MICHIGAN
COURT OF APPEALS

CHERIE ANN SEARLES,

Plaintiff-Appellee,

v

PAROLE BOARD,

Defendant-Appellant.

UNPUBLISHED

May 11, 2001

No. 220861

Tuscola Circuit Court

LC No. 99-017579-AP

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

MEMORANDUM.

Defendant appeals by leave granted the trial court's order reversing defendant's denial of parole to plaintiff and granting plaintiff parole. Plaintiff was originally convicted of second degree criminal sexual conduct (CSC II), MCL 750.520c; MSA 28.788(3), and sentenced to two to fifteen years imprisonment on April 22, 1994. We reverse.

Defendant contends that the trial court erred when it ruled that the parole board abused its discretion by denying plaintiff parole and the trial court violated the separation of powers under the Michigan Constitution by granting plaintiff parole instead of remanding to the parole board for further consideration. We agree.

Since the trial court's ruling involved parole eligibility, which is a question of law, this Court's review of the trial court's ruling is de novo. *In re Parole of Johnson*, 235 Mich App 21, 22-23; 596 NW2d 202 (1999). However, the parole board's decision to deny parole is reviewed by this Court for an abuse of discretion. *Hopkins v Parole Bd*, 237 Mich App 629, 632; 604 NW2d 686 (1999). An abuse of discretion occurs when an unprejudiced person, considering the facts on which the decision was made, would have said that there was no justification or excuse for the decision made. *Id.* at 633-634.

Here, plaintiff was assessed as a prisoner with only an average probability of parole; thus, the parole board needed only to articulate legitimate reasons to deny plaintiff parole. *Killebrew v Dep't of Corrections*, 237 Mich App 650, 656; 604 NW2d 696 (1999). In the instant case, the parole board identified several legitimate reasons for denying plaintiff parole, including: the type of crime, the fact that her victim was her fifteen year old son, her unstable domestic and employment histories, and her inability to follow rules as reflected in her misconduct record. Based on these reasons, we are unable to find an abuse of discretion on behalf of the parole

board. Further, as *Hopkins* – which was decided after the trial court’s decision in this case – indicates,

the Parole Board possesses the Department of Corrections’ exclusive jurisdiction over parole matters and because the judiciary may exercise only limited review of Parole Board decisions, which review does not encompass the authority to order prisoner’s parole, the circuit court’s order that respondent release petitioner violated the constitution. Const 1963, art 3, § 2. The Court improperly exceeded the limited scope of its review and assumed the executive’s prerogative with respect to whether petitioner should be granted parole. [*Id.* at 646 (footnotes omitted).]

See also MCL 791.234(8); MSA 28.2304(8); MCL 791.235(1); MSA 28.282305(1); *Hopkins*, *supra* at 632, 637, 648.

Accordingly, we reverse the trial court’s order granting defendant parole and reinstate the parole board’s decision denying defendant parole. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder